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the majority holding which the Minnesota court attacks in *McMullan* v. *Dickinson Co.*, 60 Minn. 156, 62 N. W. 120, 51 Am. St. Rep. 511, 27 L. R. A. 409. The latter court, after showing that the fiction of "constructive service" is properly repudiated as a basis of recovery (because of its inconsistency with the principle that the plaintiff should attempt to mitigate the damages by searching for another position), argues that the discharged servant simply desires indemnity, and not damages; that it is impossible to estimate fairly or accurately the time he would have been able to serve; that there is no way to fix the amount necessary to indemnify him, until the time has actually passed, so that the amount earned by other employment, if any, can be deducted; that in the meantime he may have no income upon which to live; that the Statute of Limitations probably would force him to bring his action before the expiration of the term that he would have been able to serve; and that he should be allowed to bring successive actions at the close of the instalment periods. That is, the Minnesota view is to adopt the rule of "constructive service" as to the measure of damages while rejecting it as the basis of recovery. Unfortunately, the equitable Minnesota rule has not been followed elsewhere. See *Carmean* v. *North American Transportation, etc. Co., supra.*

PHYSICIANS AND SURGEONS—PRACTICING WITHOUT LICENSE—SPIRITUALISM. —THE PUBLIC HEALTH LAW prohibited the practice of medicine without a license, excepting by those who practice according to the religious tenets of any church. A member of the Spiritualist Church had an office in which he received patients and dispensed drugs and liniments prepared by himself. It appeared that he was ordained as a healer of the church. *Held,* that defendant was not immune, the exemption giving him no authority to heal by agencies other than prayer or the practice of religion. *People* v. *Vogelgesang* (N. Y. 1917), 116 N. E. 977.

The cases for the most part regard the diagnosis as the test to determine whether a practice or treatment is included in the term medicine. *State* v. *Smith,* 233 Mo. 242. The exception to the statute in the case of one practicing the religious tenets of any church cannot be used as a shield to a business undertaking, and when the accused claims to act as a "divine healer" it has been held that it is the nature of defendants business, not the objects of the tenets of his church that control. *Smith* v. *People,* 51 Colo. 270, 117 Pac. 612. In *State* v. *Peters,* 87 Kans. 265, 123 Pac. 751, where defendant claimed to practice a religious belief but "diagnosed diseases and treated patients in a matter-of-fact way by manipulations and rubbing," he was not within the exemption of the statute. In the instant case the same applies. "The sufferer's mind must be brought into submission to the infinite mind, and in this must be the healing," and, continues the opinion, "While the healer inculcates the faith of the church as a method of healing he is immune. When he goes beyond that, puts his spiritual agencies aside, and takes up the agencies of the flesh, his immunity ceases." The statute is strictly construed against the defendant. *Commonwealth* v. *Delon,* 219 Mass. 217, 106 N. E. 846. But the exemption includes every person in the practice of the religious tenets

of any church who acts in good faith. *People* v. *Cole,* 219 N. Y. 98, 113 N. E. 790. It was said in *People* v. *Cole, supra,* where the exemption applied to a person practicing Christian Science healing through prayer, that "healing would seem to be not only the prominent work of the church and its members, but the one distinctive belief around which the church organization is founded and sustained." It follows from the principal case and the other authorities cited that a spiritualist could administer his treatments through the means of the tenets of his religion in so far as they do not authorize the use of drugs or extrinsic methods.

PROPERTY—UNPATENTED CONCEPTS.—Stein sued for an order enjoining Morris and others from using a certain plan for conducting the business of banking and lending money on security, now commonly known as the "Morris Plan," which he claimed to have originated and to own. The idea was to lend money, in small amounts, to borrowers who should take out an amount of stock in the company equal to the amount of their loans. This stock was to be held by the company as security for the loan and the borrower was to make periodic payments upon the stock. This when fully paid for provided a means of discharging the loan obligation. Stein alleged that he, as originator, had communicated this plan in detail to Morris who had put it into profitable use for his own purposes. *Held,* that the plan used by Morris was not in fact the same as that admitted to have been suggested to him by the plaintiff, and that, furthermore, the plaintiff's scheme was not itself original with him but had long been in operation in that part of Europe from which he had emigrated. The court said further that even if Stein had originated the Morris plan, "he could not have a property right in such a method or idea for conducting business without any physical means or devices for carrying it out. In other words, he could not put such an idea into operation without it at once escaping his own grasp and becoming the property of mankind." *Stein* v. *Morris* (Va. 1917), 91 S. E. 177.

The case is interesting because of the comparative infrequence of claims of ownership in an idea, outside of the statutes giving such ownership. The quoted dictum of the case in regard to such ownership at common law is quite in accord with precedent. There is undoubtedly property, or, to avoid question of definition, a right *in rem,* at common law in certain intangible things, such as reputation and the performance of a contract by the promisor without malicious interference by a third party. But there is no recognition of a right *in rem* concerning particular concepts emanating from individual brains, with the possible exception of an author's right to literary production. *Millar* v. *Taylor,* 4 Burr, 2303; *Gayler* v. *Wilder,* 10 How. 477, 502. This is on the ground, apparently, that ownership must be predicated upon the possibility of exclusive possession. "So long as the originator of the naked idea keeps it to himself * * * it is his exclusive property, but it ceases to be his own when he permits it to pass from him. Ideas of this sort in their relation to property may be likened to the interest which a person may obtain in bees and birds, and fish in running streams, which are conspicuous instances of (animals) *ferae naturae.* If the claimant keeps them on his own premises they